

In the United States Court of Appeals
For the Fourth Circuit

United States of America,
Appellee

v. Case no. 23-4192

Lakendra Whitehead,
Appellant

Appellant’s Appendix to Memorandum Opening Brief

Transcript of Initial Appearance1

Indictment 26

Notice of Appeal.....29

USA v. Lakendra Denise Whitehead - 3/16/2023

1

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

CASE NO.: 4:23-CR-00004

March 16, 2023

Roanoke, Virginia

Initial Appearance, Arraignment,

Bond Hearing

-v-

LAKENDRA DENISE WHITEHEAD,

Before:

HONORABLE ROBERT S. BALLOU

UNITED STATES DISTRICT JUDGE

WESTERN DISTRICT OF VIRGINIA

Defendant.

APPEARANCES:

For the Plaintiff:

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PROCEEDINGS TAKEN BY FTR; TRANSCRIBED USING COMPUTER-AIDED
TRANSCRIPTION

1 (Proceedings commenced 1:03 p.m.)

2 THE COURT: All right. Good afternoon, everybody.

3 COUNSEL: Good afternoon, Your Honor.

4 THE COURT: All right. Let's call our case,
5 please.

6 THE CLERK: *United States of America v. Lakendra*
7 *Denise Whitehead*, Case Number 4:23-CR-4.

8 THE COURT: All right. Let the record reflect the
9 government is present by its counsel and defendant present --
10 is likewise present along with counsel.

11 All right. Ms. Whitehead, if I could get you to
12 stand up, I'd be much obliged.

13 Good afternoon, ma'am. My name is Robert Ballou.
14 I'm one of the judges here in the Western District of Virginia.
15 We're here today in connection with an indictment that's been
16 returned by a federal grand jury. The purpose of today's
17 proceedings is to make sure that you understand the nature of
18 the charges in that indictment. I'll make sure you understand
19 your very important constitutional rights, and then I'll make
20 sure that you understand the penalties associated with a
21 finding of guilt. And if you are prepared today, I'll ask you
22 to enter a plea. Then we'll address anything else we need to
23 address.

24 Let me first begin by asking you to state your full
25 name for me, please.

1 THE DEFENDANT: Lakendra Denise Whitehead.

2 THE COURT: How old are you, ma'am?

3 THE DEFENDANT: 33.

4 THE COURT: And how far did you go in school?

5 THE DEFENDANT: Eleventh grade.

6 THE COURT: All right. Fair to say you read, write,
7 and understand English?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Very well. Today do you feel clearheaded
10 and understand where you are and why you're here?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. Now, Ms. Whitehead, let me
13 begin by telling you that the Fifth Amendment of the
14 Constitution guarantees you the right to remain silent, and you
15 don't have any obligation at all to make any statements about
16 these charges or answer any questions put to you by the
17 government through its investigating officers, its agents, or
18 its attorneys. You do not have to participate in the
19 government's investigation. The fact of the matter is you
20 never have to take the stand and testify unless you choose to
21 do so.

22 The Sixth Amendment of the Constitution guarantees
23 you the right to be represented by an attorney who will assist
24 you in understanding the nature of the charges you face,
25 challenging the government's evidence, as well as confronting

1 and cross-examining the government's witnesses. Likewise, an
2 attorney will assist you in preparing and presenting any
3 defenses that you have to these charges.

4 You can hire any lawyer that you see fit, but if you
5 cannot afford one the government will appoint one for you at
6 its expense.

7 Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Am I correct you want me to appoint a
10 lawyer for you?

11 THE DEFENDANT: Yes.

12 THE COURT: All right. I do have your financial
13 affidavit that was completed when you spoke with probation over
14 the phone. You understand you have an obligation to provide
15 truthful information, and the failure to do so may be a
16 separate federal offense of providing false statements under
17 oath.

18 Do you understand that? Is that a yes?

19 THE DEFENDANT: Yes.

20 THE COURT: I'm recording this, and so I can see you
21 shake your head --

22 THE DEFENDANT: Oh, I'm sorry.

23 THE COURT: -- but we need to just make sure we get a
24 recording of it.

25 And am I correct the information you provided is true

1 and correct to the best of your knowledge?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay, very well. So based upon the
4 information that's set forth in the -- in the indictment, your
5 financial affidavit, I find you qualified. I'll have counsel
6 appointed. I'm going to appoint Mr. Schiffelbein in the
7 Federal Public Defender's Office to be your attorney, not only
8 today but for as long as this matter is pending.

9 Okay. Let me explain the indictment to you. Do you
10 have a copy of it?

11 MR. SCHIFFELBEIN: We do, Your Honor.

12 THE COURT: Okay, very well. So it is a four-count
13 indictment that charges providing false statements to a federal
14 firearms dealer. I'm going to have the government explain to
15 you in greater detail what that -- what that indictment is all
16 about, what the penalties are if you are found guilty, and then
17 we'll also have explained to you the different pleas you can
18 enter. And if you are prepared today, I'll have you enter a
19 plea to those charges.

20 Have you had a chance to go over the indictment with
21 Mr. Schiffelbein and at least understand the nature of the
22 charges?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. Mr. Schiffelbein, have you
25 had an adequate opportunity to advise Ms. Whitehead and

1 satisfied she can enter, for today's purposes, a knowing and
2 voluntary plea?

3 MR. SCHIFFELBEIN: I am, Your Honor.

4 THE COURT: All right, very well.

5 So Ms. Whitehead, I'm going to ask you to carefully
6 turn your attention to Mr. Adams, who is going to explain to
7 you the nature of the charges, penalties, and also the
8 different pleas you can enter. Mr. Adams?

9 MR. ADAMS: Yes, Your Honor.

10 Ms. Whitehead, you've been charged in a four-count
11 indictment, each count alleging that you made a false statement
12 during the purchase of a firearm. The elements of this offense
13 and the associated penalty, which is the same for all the
14 counts, is as follows:

15 The government must prove that, one, you knowingly
16 made a false oral or written statement to a federally licensed
17 firearms dealer, that the false statement was made in
18 connection with the acquisition of a firearm, and that the
19 statement was intended or likely to deceive such firearms
20 dealer with respect to a fact material to the lawfulness of the
21 sale of the firearm.

22 The penalty associated with each count is a maximum
23 punishment of ten years imprisonment, a fine of up to \$250,000,
24 a period of supervised release of up to three years, and a
25 hundred dollar special assessment for each count.

1 Now, you can enter one of three pleas to this
2 indictment: not guilty, guilty, or no contest.

3 Should you plead not guilty, you have the following
4 rights: The right to a speedy and public trial; the right to
5 require the government to prove its case beyond a reasonable
6 doubt; the right to a trial by a jury of 12 persons, or if the
7 government consents to waive trial by jury to be tried by the
8 judge alone; the right to assistance of counsel throughout
9 trial; the right to remain silent at trial; the right to
10 confront all witnesses who testify against you and to
11 cross-examine those witnesses; the right to use subpoenas to
12 bring witnesses to court to testify on your behalf; and the
13 right to appeal a guilty verdict.

14 Do you understand the rights you have if you plead
15 not guilty?

16 MR. SCHIFFELBEIN: Ms. Whitehead understands.

17 MR. ADAMS: Should you plead guilty you would waive
18 these rights and the right to a trial and you would be making a
19 public admission of guilt. The Court could hear some of the
20 facts of your case in order to lay a factual basis for your
21 guilty plea, but the government would not be required to prove
22 its case beyond a reasonable doubt.

23 Do you understand this?

24 MR. SCHIFFELBEIN: Ms. Whitehead understands her
25 rights.

1 MR. ADAMS: You may also plead no contest. The
2 government always objects to any plea of no contest. This plea
3 is similar to a plea of guilty except that it cannot be used
4 against you in a federal civil proceeding.

5 Do you understand this?

6 MR. SCHIFFELBEIN: Ms. Whitehead understands her
7 rights.

8 THE COURT: All right. So Ms. Whitehead, do you
9 understand the charges you face in these four counts of the
10 indictment?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you understand the penalties you face
13 if you're found guilty?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And do you understand the different pleas
16 you can enter, the rights you have, and the rights you may
17 waive as to each plea?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. Satisfactory to waive formal
20 reading?

21 MR. SCHIFFELBEIN: Yes, Your Honor.

22 THE COURT: And plead collectively as well?

23 MR. SCHIFFELBEIN: Yes, Your Honor. We'd ask the
24 Court enter a plea of not guilty.

25 THE COURT: All right, very well.

1 So Ms. Whitehead, as to the charges of Counts One
2 through Four, what is your plea? Not guilty, guilty, or no
3 contest?

4 THE DEFENDANT: Not guilty.

5 THE COURT: All right. I'll note your plea for the
6 record. We have not scheduled this case for trial yet. The
7 case has been assigned to Judge Urbanski in this court, and
8 we'll work with his calendar, the calendar of your attorney and
9 the government, and get this matter scheduled as soon as we can
10 reasonably do so.

11 Mr. Adams, I do have the pretrial services report. I
12 understand that Ms. Whitehead has voluntarily submitted herself
13 today. Any objection to what's set forth in the pretrial
14 services report?

15 MR. ADAMS: No. We're not seeking detention in this
16 matter, Your Honor.

17 THE COURT: All right, very well.

18 Mr. Schiffelbein, anything I need to know about
19 Ms. Whitehead before I set conditions?

20 MR. SCHIFFELBEIN: We don't have any information to
21 offer aside from what's in the pretrial services report. I
22 would object to a number of the proposed conditions.

23 THE COURT: All right. Go ahead and lay those out.

24 MR. SCHIFFELBEIN: Certainly. There's a proposed
25 restriction on travel, that she comply with restrictions on

1 travel outside the Western District of Virginia. Nothing in
2 the record that indicates that she's a risk of flight. We
3 would simply ask that the Court order that if she were to
4 travel outside the Western District of Virginia, notify her
5 pretrial services officer, and otherwise prohibit her from
6 traveling outside of the continental United States.

7 There's a prohibition on contact with witnesses.
8 Unless there's any significant concerns about witness tampering
9 or any obstruction of justice, I'd ask that that provision not
10 be ordered because there's no evidence that it is necessary in
11 this case.

12 There's a request that she report any contact that
13 she has with law enforcement to her pretrial services officer.
14 We would object to that. We believe it's compelled speech and
15 does have Fifth Amendment implications, and, again, there's no
16 reason to believe that it's necessary in this particular case.

17 There's a condition -- a request that she submit to a
18 search of her person, residence, vehicle. There's no reason to
19 suggest in this case that she poses a danger to anybody or to
20 the community or to pretrial services officers, so we would
21 object to that.

22 There is a request that she refrain from the use of
23 controlled substances. In part, I believe this is based on the
24 interview with Ms. Whitehead. Although our CJA plan indicates
25 that, as much as possible, counsel will be appointed prior to

1 the pretrial services interview, I wasn't able to be appointed
2 until after that. And I believe that pretrial services asked
3 her if she had used controlled substances or not and she made
4 statements in response to that.

5 There's nothing in the facts of this case, nothing in
6 her history, that suggests she has any drug problem at all, and
7 the fact --

8 THE COURT: Well, I think what's in the pretrial
9 services report is that she does have a history of alcohol
10 abuse, and that's what's caused her current kidney condition.

11 MR. SCHIFFELBEIN: There is nothing outside of what's
12 in the pretrial services report that would suggest it.

13 THE COURT: Okay.

14 MR. SCHIFFELBEIN: What's in the pretrial services
15 report suggests that at one time she had a substance abuse
16 disorder and does no longer.

17 THE COURT: Okay. I may have misunderstood the way
18 in which --

19 MR. SCHIFFELBEIN: No longer has a substance abuse
20 disorder. Regardless, to the extent she even had a substance
21 abuse disorder, it is not causative to interact with the
22 criminal justice system.

23 To the extent that Ms. Whitehead uses what is a
24 lawful substance in the Commonwealth of Virginia that is
25 otherwise prohibited, that action does not cause any concern

1 for whether she will appear in court in this case or whether
2 she's a danger to the public or the community at large, or
3 frankly even to herself. So we don't believe it's called for
4 under the Bail Reform Act.

5 Likewise, we don't agree that there's a reason for
6 the Court to order her not to drink. She does not drink
7 because of her kidney condition, but there's no evidence that
8 that is a condition that's necessary for the Court to be
9 assured that she will not be a risk of flight or a danger to
10 the community.

11 There is a provision that she submit to substance
12 abuse counseling and treatment or testing. Likewise, we're
13 asking for the Court not to impose that because there's no
14 reason to believe in this case that Ms. Whitehead needs to have
15 substance abuse testing or treatment in order to not be a risk
16 of flight or a danger to the community.

17 Likewise, with mental health evaluation and mental
18 health treatment, there's no reason in this case to believe
19 that her actions -- alleged actions -- almost five years ago,
20 right before the statute of limitations were to expire, have
21 any bearing on her mental health or that there is any need for
22 any mental health counseling or treatment such that if she
23 weren't to do that the Court might have a serious concern that
24 she is either a risk of nonappearance in court or a danger to
25 the community.

1 I don't believe there's any evidence to support that
2 those conditions are necessary under the Bail Reform Act, so
3 we'd object to the Court imposing them.

4 THE COURT: All right. Do you want to address any of
5 that, Mr. Adams?

6 MR. ADAMS: Your Honor, with respect to the not
7 contacting any type of witnesses, we do have a concern with --
8 in regards to that matter, and so I have four names that I can
9 submit to defense counsel with respect to that.

10 We don't know whether she still has communication
11 with these individuals, but this investigation hasn't
12 necessarily concluded, and so --

13 THE COURT: Typically I will say not have any
14 contact -- what's intended is not have any substantive contact
15 regarding the allegations in the indictment.

16 MR. ADAMS: That's right. That's -- and that's fine
17 with the government, Your Honor, but there would be a need for
18 it I think in this case, unless otherwise authorized or -- by
19 law enforcement or the Court.

20 THE COURT: Okay.

21 MR. ADAMS: The prohibition against traveling inside
22 or outside of the district, I mean, I do think that's
23 relatively standard. And probation can say -- can give her
24 permission to travel anywhere, it's just that she needs to sort
25 of notify them of if she intends to travel outside the

1 district. I don't necessarily think that's a significant
2 restriction on her ability to travel and one that the probation
3 office has generally been, probably, accommodating with.

4 In terms of the contact with law enforcement
5 personnel, that condition makes sense for anybody on pretrial
6 release. If they have a reason to encounter law enforcement,
7 we should know about it while they have a pending criminal
8 indictment in court. That makes sense. It's not always
9 possible that law enforcement would report those type of
10 contacts back to probation, and, therefore, this also allows
11 the supervising officer to know if Ms. Whitehead would have
12 been in any type of -- any type of trouble or had any type of
13 interactions.

14 The search of a person, residence, vehicle, or
15 office, the Court can probably tailor that to meet with needs
16 of probation in this matter.

17 As far as alcohol, I'll submit that to the Court
18 because I don't believe that -- that's definitely against her
19 best interest given her condition, but she does admit to the
20 frequent use of marijuana. I don't believe that she has a
21 card, is what I read in the pretrial services report. So on
22 that there is a history of substance abuse that can merit
23 testing if the probation officer feels like it -- it's
24 necessary. They're the ones who can probably best judge that
25 in their interactions with Ms. Whitehead.

1 As far as the mental health components, I'll submit
2 those to the Court's discretion.

3 I think I've covered everything that Mr. Schiffelbein
4 addressed.

5 THE COURT: Okay. All right. So Ms. Whitehead, I'm
6 going to set conditions of release, and I'm going to try to
7 make sure that I went through -- go through each of the
8 conditions and I'll address those in due course.

9 So first of all, bond in federal court is designed to
10 do two things: One is to assure your presence in court when
11 you're required to be there, that you're on time, in place, and
12 ready to go. And secondly, to reasonably assure the safety of
13 the community and others, including yourself.

14 If you violate the terms that I set, you are subject
15 to being taken into custody; held by the marshal until this
16 matter is resolved. Likewise, if you commit a federal, state,
17 or local crime while on pretrial release, you are subject to
18 being separately indicted by the -- by the government for
19 violating my order of release.

20 Do you understand these things?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right, very well. So I'm going to
23 set an unsecured bond. You don't have to post anything out the
24 door, but the financial penalty if you violate is a \$5,000
25 unsecured bond.

1 You are to -- you live at the Stokes Street address
2 with your mother; is that right?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. Anyone else live there?

5 THE DEFENDANT: My mother's boyfriend.

6 THE COURT: Okay. And any weapons in the house?

7 THE DEFENDANT: No, sir.

8 THE COURT: Any animals?

9 THE DEFENDANT: No, sir.

10 THE COURT: Very well. So you're to live at the
11 Stokes Street address with your mother and her boyfriend.

12 Inside the home you cannot have any firearms or other
13 dangerous instrumentalities, and you cannot possess a firearm
14 while on pretrial release.

15 With respect to travel, first of all, if you have any
16 passports you need to surrender those, and if you don't have a
17 passport you cannot apply for one.

18 With respect to travel, you cannot travel outside the
19 Western District of Virginia without the permission of your
20 probation officer, and that is typically given liberally to be
21 able to comply with conditions, especially if you need any
22 medical treatment. I recognize you live down in the
23 Martinsville area. Where do you get your medical treatment?

24 THE DEFENDANT: I travel to -- to UVA. I go to UVA
25 and Lynchburg --

1 THE COURT: Okay.

2 THE DEFENDANT: -- for my appointments.

3 THE COURT: Both of those are in the western
4 district, and that's perfectly fine.

5 THE DEFENDANT: Okay.

6 THE COURT: If you need -- the western district is
7 just east of Charlottesville all the way to the far western tip
8 of Virginia. If you need to travel across state lines, just
9 let your probation officer know and get their permission.

10 The reason I -- I have that condition is it is a
11 standard condition. That's where this Court has jurisdiction,
12 and so your probation officer can give you permission to cross
13 state lines as need be, okay?

14 MR. SCHIFFELBEIN: She's indicated she's on a
15 transplant list at the Duke hospital. And I know that the
16 Court is --

17 THE COURT: If -- first of all, probation is going to
18 give you permission to be able to get whatever medical
19 treatment you need to get outside of the state.

20 THE DEFENDANT: Okay.

21 THE COURT: If you need to go on an emergency
22 basis -- correct me if I am wrong -- you go and have your
23 family contact probation and let them know that you go. Take
24 care of yourself first.

25 THE DEFENDANT: Okay.

1 THE COURT: All right. But it's not an emergency to
2 go across state lines to dinner.

3 THE DEFENDANT: Yes, sir. Yes, sir.

4 THE COURT: But it is an emergency to go to Duke to
5 get a transplant.

6 THE DEFENDANT: Okay.

7 THE COURT: All right. And just, in other words,
8 stay in touch with probation, all right?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: So that's the first thing.

11 With respect to contacts with witnesses, for the
12 persons who are identified by -- by the government, you're not
13 to have any contact regarding the subject matter of this, this
14 action, all right?

15 Generally -- and that's going to be my order, and
16 I'll leave it to your attorney for any further advice with
17 respect to whether you should have contacts with any known
18 witnesses in the case, but the government will provide the
19 names of those persons that are known witnesses in the case.

20 If you -- if you do have any contact with law
21 enforcement regardless of how minor it may be, they notify
22 probation that you've been in contact with them and the nature
23 of that contact, and so I require a person on supervision to
24 notify probation that they've been in contact with law
25 enforcement. I do not believe that it violates your Fifth

1 Amendment rights to simply notify probation you've been in
2 contact with them in that regard.

3 With respect to your home, probation -- I do require
4 you and any adult to consent to a warrantless search for
5 purposes of compliance with pretrial release. Probation -- the
6 standard by which probation conducts such search is where
7 there's reasonable cause that probation has the -- that there
8 is a violation and they don't -- they cannot search beyond
9 that.

10 Is that the language that's used, Mr. Murphy?

11 PROBATION: Yes, sir.

12 THE COURT: Reasonable cause, okay.

13 With respect to the use of any illegal or controlled
14 substances, there is a -- I recognize you don't drink now, and
15 but because of your history I'm going to -- and because of your
16 medical condition still require you not to drink. And also the
17 condition is that you cannot have any illegal or controlled
18 substances.

19 In federal court, marijuana is an illegal substance,
20 and I can't authorize you to continue to use marijuana because
21 in federal court it is -- it is an illegal substance in that
22 regard. So that is my condition.

23 I am not going to require -- I authorize probation to
24 be able to drug screen you at its discretion. I'm not going to
25 require it on any particular basis, but it's at its discretion.

1 With respect to mental health, this issue was raised
2 in the -- are you presently seeing anyone for your depression
3 and bipolar?

4 THE DEFENDANT: No, sir. They just made me another
5 appointment in dialysis.

6 THE COURT: Pardon me?

7 THE DEFENDANT: No, they just set me up an
8 appointment for -- at dialysis to go talk to somebody.

9 THE COURT: Okay. So that is -- that is coming or --

10 THE DEFENDANT: Yeah.

11 THE COURT: Okay. So I -- I do want you, because of
12 the recency of the diagnosis in that regard and because of the
13 information in pretrial services that -- that you had stopped
14 taking your medication, I do want you to be evaluated. You can
15 continue to have the -- the appointment that they had at
16 dialysis, or probation can help you get set up with the local
17 community services board and to follow any treatment
18 recommendations that are recommended for you at that point in
19 time.

20 You got a lot going on, and this can be helpful to
21 you as you're able to be able to manage the issues that are --
22 that are ongoing. And so that is a requirement that I'm going
23 to have as well, that you comply with that.

24 Otherwise -- Ms. Spence, did I cover everything?

25 PROBATION: Yes, sir.

1 THE COURT: Mr. Adams?

2 MR. ADAMS: I do believe you did, Judge.

3 THE COURT: Mr. Schiffelbein, did I cover every area
4 that you had an objection?

5 MR. SCHIFFELBEIN: I believe so, Your Honor. I just
6 have two points I'd like to raise.

7 THE COURT: Yes, sir.

8 MR. SCHIFFELBEIN: With respect to the mental health
9 treatment, is the Court requiring her to sign a release of
10 information?

11 THE COURT: Sign a release solely as -- that she is
12 complying with mental health recommendations. Not to get her
13 records to understand what she's doing, but that she's
14 complying with whatever recommendation there is and following
15 through in that regard.

16 MR. SCHIFFELBEIN: Would the Court allow for me to
17 see the release before she signs it, essentially? I don't want
18 her to have contact with probation and sign a release that I
19 don't otherwise agree with.

20 THE COURT: And I'm going to get you to speak up. I
21 think I heard everything. You can certainly see the release,
22 yes. Certainly.

23 But I think that's the scope of the contact that
24 you-all have with mental health, is to understand whether
25 there's compliance with treatment recommendations; is that

1 right, Mr. Murphy?

2 PROBATION: Well, Your Honor, we would typically
3 contact mental health providers to determine when they -- when
4 they are seen, are they attending all appointments as
5 instructed, what the current diagnosis might be, treatment
6 protocol, and to give assessments by the provider.

7 THE COURT: Okay.

8 PROBATION: That's the only way we can really
9 coordinate supervision --

10 THE COURT: Right.

11 PROBATION: -- in conjunction with the provider.

12 THE COURT: Okay, all right. Very well.

13 MR. SCHIFFELBEIN: We would object to that. I
14 believe that's well beyond the scope of what is necessary under
15 the Bail Reform Act and also what the Court has ordered.

16 The second point I want to raise, and just because
17 I'm not sure of the law on this Court, Your Honor, setting
18 bail, and whether we can appeal this to the district court. I
19 just want to note --

20 THE COURT: So I will tell you what I understand, is
21 that any appeal is to the Fourth Circuit, so...

22 MR. SCHIFFELBEIN: And that's why I'm trying to note
23 it to make sure the record is --

24 THE COURT: Yes, sir.

25 MR. SCHIFFELBEIN: -- as clear as possible.

1 We would object to the decision giving discretion to
2 probation about whether to require any drug testing. Also
3 object to any other adult being required to submit to a test.
4 Not drug test, but just any -- I'm sorry, not test. Any
5 search.

6 THE COURT: Any search, all right.

7 What I want to make sure is that the home remains
8 free, especially of firearms, and so I want them to be able to
9 go into all areas of the home. As I'm understanding, it's a
10 single family home. It's not a home with separate rooms that
11 would be considered separate abodes, if you will. And I want
12 probation to be able to make sure that it's a home that remains
13 safe in that regard.

14 With respect to the mental health assessment and
15 release, I note the objection. If -- and I'll allow you to
16 return if you believe that what probation does goes beyond the
17 scope of the release, but I think as described by Mr. Murphy is
18 I think consistent with what my understanding of probation is
19 doing so as to be able to effect proper supervision and
20 reasonably ensure the safety of the community.

21 With respect to substance abuse testing, because
22 there is reference in the pretrial services report that
23 Ms. Whitehead has used marijuana as recently as two days before
24 the arrest, I'm going to give them the ability to be able to
25 test at their discretion.

1 I'm not requiring it to be done at any particular
2 time frame in that regard. We understand that she's going to
3 be positive for a time period. We also understand that she's
4 also going through a significant amount of -- of medical
5 treatment. And I presume that her medical providers -- this
6 will be up to her -- are certainly aware of -- of any
7 substances that she's taking, especially if she is hopeful to
8 be on a transplant surgical table in the near future, they need
9 to know what's going on. So I note the objection in that
10 regard.

11 All right. Any other objection? Did I cover
12 everything else?

13 MR. SCHIFFELBEIN: I believe so, Your Honor. Thank
14 you.

15 THE COURT: All right, very well.

16 Mr. Murphy?

17 PROBATION: Your Honor, I just -- something mentioned
18 earlier. Do you want me to go get one of these releases so the
19 defense can examine it? After court is over? Before court
20 adjourns?

21 THE COURT: Yeah, I think after court is over. I'm
22 not -- I'm going to be here all afternoon.

23 MR. SCHIFFELBEIN: I -- I think she's going to sign
24 it. I object to that --

25 THE COURT: I understand.

1 MR. SCHIFFELBEIN: -- and we'll litigate --

2 THE COURT: Right.

3 MR. SCHIFFELBEIN: -- further if we have to.

4 THE COURT: Right. And my ongoing concern is a
5 recency of a diagnosis and any indication of not taking
6 medication during this time period. I want to make sure she
7 stays mentally well during this time period to the extent
8 possible.

9 All right. Ms. Whitehead, don't go anywhere.
10 Ms. Brown is going to get the paperwork for you to be able to
11 sign. And she's already been processed; is that right?

12 PROBATION: Yes, sir.

13 THE COURT: Thank you very much for coming up today
14 and being processed, and good luck to you. Thank you.

15 THE DEFENDANT: Thank you.

16 THE COURT: All right. We'll stand in recess.

17 THE MARSHAL: All rise.

18 (Proceedings concluded 1:29 p.m.)

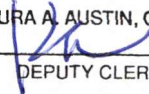
19 **CERTIFICATE**

20 I, Mary J. Butenschoen, do hereby certify that the
21 foregoing is a correct transcript of the electronic recording
22 in the above-entitled matter.

23 _____/s/_____ 3/23/2023
24 Mary J. Butenschoen, Transcriber
25

FEB 23 2023

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
DANVILLE DIVISION
FEBRUARY 2023 SESSION

LAURA A. AUSTIN, CLERK
BY:  DEPUTY CLERK

UNITED STATES OF AMERICA) Case No.: 4:23cr00004
)
v.) SEALED INDICTMENT
)
LAKENDRA DENISE WHITEHEAD) In violation of:
)
) 18 U.S.C. §§ 922(a)(6), 924(a)(2)

COUNT ONE

The Grand Jury charges that:

1. On or about March 17, 2018, in the Western District of Virginia, the defendant, LAKENDRA DENISE WHITEHEAD, in connection with the acquisition of a firearm, a SCCY, Model CPX 1, 9mm, Semi-Automatic Pistol, from Riverside Pawn, a licensed dealer of firearms, within the meaning of Chapter 44, Title 18, United States Code, knowingly made a false and fictitious written statement to Riverside Pawn, which statement was intended and likely to deceive Riverside Pawn, as to a fact material to the lawfulness of such sale of the said firearm to the defendant under chapter 44 of Title 18, United States Code, in that the defendant did execute a Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives form 4473, Firearms Transaction Record, to the effect that she was the actual buyer of the firearm indicated on the Form 4473, when in fact as the defendant then knew, she was not the actual buyer of the firearm.

2. All in violation of Title 18, United States Code, Sections 922(a)(6) and 924(a)(2).

COUNT TWO

The Grand Jury further charges that:

1. On or about March 31, 2018, in the Western District of Virginia, the defendant, LAKENDRA DENISE WHITEHEAD, in connection with the acquisition of a firearm, a Taurus, Model PT111 G2, 9mm Semi-Automatic Pistol, from Big Shots Guns, a licensed dealer of firearms, within the meaning of Chapter 44, Title 18, United States Code, knowingly made a false and fictitious written statement to Big Shots Guns, which statement was intended and likely to deceive Big Shots Guns, as to a fact material to the lawfulness of such sale of the said firearm to the defendant under chapter 44 of Title 18, United States Code, in that the defendant did execute a Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives form 4473, Firearms Transaction Record, to the effect that she was the actual buyer of the firearm indicated on the Form 4473, when in fact as the defendant then knew, she was not the actual buyer of the firearm.

2. All in violation of Title 18, United States Code, Sections 922(a)(6) and 924(a)(2).

COUNT THREE

The Grand Jury further charges that:

1. On or about May 10, 2018, in the Western District of Virginia, the defendant, LAKENDRA DENISE WHITEHEAD, in connection with the acquisition of a firearm, a Glock, Model 22, 40-Caliber Semi-Automatic Pistol, from Big Shots Guns, a licensed dealer of firearms, within the meaning of Chapter 44, Title 18, United States Code, knowingly made a false and fictitious written statement to Big Shots Guns, which statement was intended and likely to deceive Big Shots Guns, as to a fact material to the lawfulness of such sale of the said firearm to the defendant under chapter 44 of Title 18, United States Code, in that the defendant

did execute a Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives form 4473, Firearms Transaction Record, to the effect that she was the actual buyer of the firearm indicated on the Form 4473, when in fact as the defendant then knew, she was not the actual buyer of the firearm.

2. All in violation of Title 18, United States Code, Sections 922(a)(6) and 924(a)(2).


COUNT FOUR

The Grand Jury further charges that:

1. On or about May 23, 2018, in the Western District of Virginia, the defendant, LAKENDRA DENISE WHITEHEAD, in connection with the acquisition of a firearm, a Glock, Model 22 Gen 4, 40-Caliber Semi-Automatic Pistol, from Deluxe Pawn II, LLC, a licensed dealer of firearms, within the meaning of Chapter 44, Title 18, United States Code, knowingly made a false and fictitious written statement to Deluxe Pawn II, LLC, which statement was intended and likely to deceive Deluxe Pawn II, LLC as to a fact material to the lawfulness of such sale of the said firearm to the defendant under chapter 44 of Title 18, United States Code, in that the defendant did execute a Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives form 4473, Firearms Transaction Record, to the effect that she was the actual buyer of the firearm indicated on the Form 4473, when in fact as the defendant then knew, she was not the actual buyer of the firearm.

2. All in violation of Title 18, United States Code, Sections 922(a)(6) and 924(a)(2).

A TRUE BILL this the 23 day of February 2023.



CHRISTOPHER R. KAVANAUGH
UNITED STATES ATTORNEY

s/FOREPERSON
FOREPERSON

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
DANVILLE DIVISION

United States of America

v.

Docket No. 4:23-CR-04

Lakendra Whitehead

Notice of Appeal

Ms. Lakendra Whitehead notifies this court of her appeal to the Fourth Circuit of the conditions of release imposed by the Honorable Robert S. Ballou on March 16, 2023, pursuant to 18 U.S.C. § 3145. She requests the court continue the appointment of her counsel on the appeal and waive the payment of fees and costs, given her indigency.

Respectfully submitted,

/s/ Benjamin Schiffelbein
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